

# THE THIRD BRANCH

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## INTERVIEW

### An Interview with Representative Howard Berman

*Representative Howard Berman (D-CA) was elected to Congress in 1982. He serves on the House Judiciary Committee and chairs the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property.*



*Representative Howard Berman (D-CA)*

**Q:** You've championed a pay increase for federal judges. But some of your colleagues oppose delinking their salaries from those of judges. What do you say to them?

**A:** Some of my colleagues believe that linking the salaries of federal judges to our own salaries will somehow make it politically more palatable for Members of Congress to approve cost-of-living adjustments for themselves. The evidence simply does not bear this out. The salaries of Members of Congress and district judges have really only been linked firmly for the last 20 years. In six of the last 12 opportunities, neither Congress nor federal judges have received a pay adjustment. Considering those numbers, at best, linkage only pushes the probability of authorizing a COLA for Congress to 50-50. I don't think those odds warrant continuing a policy that holds judicial salaries hostage to the politics of congressional pay raises.

Absent a significant benefit to congressional salaries, I encourage my colleagues to consider whether linkage makes sense as an underlying

*See Interview on page 10*

### New USMS Threat Assessment Center Provides Immediate Response to Threats

In September, officials from the federal Judiciary and the U.S. Marshals Service cut the ribbon formally opening the Marshals Service's new Threat Management Center (TMC). The facility will be the nerve center of the Judicial Security

*See Center on page 2*

### Exercise Grand Slam Tests Readiness in Disaster

*[Editor's Note: The following is a hypothetical situation only, part of Exercise Grand Slam, intended to test the emergency preparedness of government agencies in New York City.]*

At noon on a fall day in New York City, a suspicious package is discovered in the city's business district. Within hours, five vehicles—possibly with

*See Grand Slam on page 4*

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Division's Office of Protective Intelligence, whose mission is to collect, analyze and disseminate information about threats to the Judiciary to field investigators.

"During my tenure as chair of the Judicial Conference Committee on Judicial Security, I have frequently discussed with Director Clark the U.S. Marshals Service's threat assessment capabilities," said Judge David B. Sentelle (D.C. Cir.). "I have also visited two of their tech centers and been most impressed with what they have done in the use of technology for fugitive tracking and apprehension. I have been delighted with the way they have adapted their technical knowledge and expertise to the protection of judicial security. We should all be pleased with this new addition to their arsenal and with the direction the USMS is taking in the protection of federal judges."

Marshals in all 94 districts, from Guam to New York, have 24-hour access to the TMC. The Center will provide vital data and recommendations to district personnel conducting protective investigations. A protective investigation defines how marshals will address and mitigate a potential threat.

Judge Henry Hudson (E.D. Va.), who now chairs the Conference Committee on Judicial Security Off-site Security Subcommittee, recognized the need for the ability to respond immediately to threats to the security of judges when he served as director of the U.S. Marshals Service from 1992 to 1993.

"We needed an information base and people skilled in its analysis, along with the ability to quickly put into place a security plan," said Hudson. "The



*U.S. Marshals Service Director John Clark, Judge David Sentelle (D.C. Cir.), Acting Deputy Attorney General Craig Morford, and Judge Henry Hudson (E.D. Va.) cut the ribbon at ceremonies opening the USMS Threat Management Center on September 14, 2007.*

Center is that 24-hour resource. It's a central location judges can call if they feel there is a potential threat. The Center is able to mine the database, assess a viable threat, and quickly determine the appropriate level of response."

The TMC has been designated a sensitive compartmented information facility, also known as an SCIF, which allows for the transmission and storage of classified information, provides secure video teleconferencing, and has geospatial data-mapping capabilities. The Center monitors numerous Department of Justice and USMS networks and databases, and has access to additional law enforcement networks, both classified and unclassified. Several intelligence products are generated in the Center, such as USMS intelligence bulletins, alert notices, and threat assessments for cases and high-threat trials.

Providing the deputy marshals with instant access to the TMC will improve the timely delivery of pertinent information to the many protective details and threat investigations being conducted by marshals, as well

as to the agency's senior leadership. In addition, the Center will coordinate threat investigations directly with key officials of state, local, and federal law enforcement and intelligence agencies.

Understanding that partnerships are at the core of any successful operations center, the USMS has established liaison positions at the FBI National Joint Terrorism Task Force, the Department of Homeland Security, the Federal Bureau of Prisons, and other joint terrorism task forces. The marshals also have part-time liaison positions at the U.S. Capitol Police and the U.S. Supreme Court Police. 

# U.S. Sentencing Commission Makes Amendment Retroactive

The U.S. Sentencing Commission has voted to make retroactive a recent amendment to the Federal Sentencing Guidelines that reduces the penalties for crack cocaine offenses. Retroactivity of the crack cocaine amendment will become effective on March 3, 2008.

The amendment that went into effect November 1, 2007, modified drug quantity thresholds, adjusting crack cocaine offenses downward by two levels. With the Commission's decision, the change in sentencing will now apply retroactively to prisoners whose cases are final. Commission analysis estimates that the retroactive guideline amendment could impact more than 19,000 offenders. The average reduction in sentence would be 27 months, and in the first year an estimated 3,804 offenders could be released from prison, according to the Commission.

A Commission statement released following the vote said, "The Commission's actions today, as well as the promulgation of the original amendment for crack cocaine offenses, are only a partial step in mitigating the unwarranted sentencing disparity that exists between Federal powder and crack cocaine defendants." The Commission delayed the effective date of its decision in order to give the courts sufficient time to prepare for and process the number of cases that may be filed. The Commission noted that not every crack cocaine offender will be eligible for a lower sentence under the decision, saying, "A Federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and how much that sentence should

be lowered." That determination, according to the Commission statement, will be based upon many factors, including whether the offender's sentence would pose a danger to public safety.

In the fall of 2007, the Commission heard public testimony—and received more than 33,000 comments—on the advisability of making two amendments retroactive. Judge Reggie B. Walton (D.D.C.), a member of the Judicial Conference Criminal Law Committee, testified on behalf of the Conference in November hearings held by the Commission. Walton told the Commission that the Criminal Law Committee, after deliberation, had adopted the position that the crack cocaine amendment should be made retroactive.

For at least 12 years, the Commission has recognized defects in federal cocaine sentencing policy, specifically that it takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum penalty. The Commission considered the question of whether to amend the crack cocaine guideline to correct those defects. Subsequently, the guidelines for crack cocaine were modified downward by the Commission, and became effective on November 1, 2007.

"Today, the Commission is confronted with the next logical question. It must determine whether the amendment should be made retroactive," Walton said at the November hearing. According



*The members of the U.S. Sentencing Commission voted unanimously to apply a recent amendment retroactively for crack cocaine offenses.*

to Walton, it was a matter of weighing fundamental fairness against "serious concerns about community safety and practical implications for the workload of the federal Judiciary."

In a letter to USSC Chair, Judge Ricardo H. Hinojosa, then-Criminal Law Committee chair Judge Paul Cassell wrote that "while concerned about the impact that retroactivity may have on the safety of communities, a majority of the Committee believes that the Commission's precedents, and a general sense of fairness, dictate retroactive application. The Committee also believes that the burden to the courts and probation officers associated with resentencing is not a sufficiently countervailing consideration."

The Office of Probation and Pretrial Services at the Administrative Office already has begun planning, at the Committee's direction, for the increased workload as the amendment is applied retroactively. The first of several expected planning meetings will be held in mid-January to which federal judges, federal defenders, U.S. attorneys, and probation officers will be invited.

For more on the Commission's actions visit [www.ussc.gov](http://www.ussc.gov). 

explosives on board—are found parked in southern Manhattan, in Brooklyn, and around Penn Station and the United Nations. Alerted by the Department of Homeland Security to a possible terrorist attack in the city, the New York City Office of Emergency Management requests that all buildings in the vicinity of the suspicious vehicles hold their people inside while police investigate.

At the heart of the affected area is the James L. Watson U.S. Court

clerk, deputy clerk, and a number of court managers participated in Exercise Grand Slam, a full-scale continuity-of-operations program relocation exercise run by the metropolitan New York Federal COOP Working Group (CWG).

CWG, a committee of the New York City Federal Executive Board, conducts periodic Continuity of Operations Plan (COOP) exercises for all government agencies in the New York metropolitan area designed to test and evaluate COOP readiness. Southern District of New York Circuit Executive Clifford Kirsch chairs the Board.

accounts on national search engines, so they can be reached from anywhere, anytime.

When the actual exercise began, the court gathered its first-responders—managers and their deputies or a designated employee—to explain the scenario.

“There are different stages of SIP,” said Volpe. “An announcement by the fire safety director over the loudspeaker would tell employees to, for example, stay in their offices and lock their doors. This keeps them from going out into the halls and



of International Trade Building. Inside the building, Clerk of Court Tina Potuto Kimble and Chief Deputy Clerk Ed Volpe and 97 other employees of the Court of International Trade are sheltering-in-place (SIP) in two courtrooms selected for their locations away from windows and with access to bathrooms.

Or at least Kimble and Volpe are. Actually, most court employees went about their business as usual that day while the

“Grand Slam,” explains Volpe, “was a 30-day exercise compressed into one day. The night before the exercise we used our cascading phone tree to call everyone. It was a good way to verify phone numbers and to be sure everyone got the message. If a generic answering message was reached, the employee was called back.” The court already asks employees for personal e-mail addresses and there are plans to set up employee e-mail

perhaps putting themselves at risk of meeting a gunman. Or they may be instructed to stay in the building.” Volpe explains that remaining in the building might be the safest avenue in the event of civil unrest or if there was a biological hazard outside. “In the courthouse, we would seal airways and passageways with plastic as we head to our shelter-in-place courtrooms. Once in the courtrooms, we’d lock the doors and seal them.”

If occupants must evacuate the building, the Court of International Trade has a rally point several blocks away that's known to all employees. The court holds annual evacuation drills to familiarize staff with the location.

In Exercise Grand Slam, the scenario eventually called for buildings to begin releasing their occupants and for businesses to close. The court would need to find a remote site from which to operate.

"You have to remember where we are," said Chief Judge Jane A. Restani. "Other courts in the Eastern and Southern Districts of New York have alternative courthouses they can go to. We have one courthouse in lower Manhattan." Restani says the court was disrupted temporarily when the World Trade Towers fell, but with help from the General Services Administration was back in the building within a week.

"We always had backup for our data and we were able to update our website quickly," Restani said. "In fact, we were able to help attorneys who lost records and data in the Towers. But we learned a lot from that event. And we were eager to have a COOP site. New Jersey was a natural COOP for us."

The District of New Jersey houses the court's backup server and now, in the event of a court evacuation, provides a two-room suite and courtrooms if needed.

"The key for us," explains Volpe, "is that our court is predominantly electronic. We have a spare server and backup tapes in New Jersey. The tapes are updated once a month, so we'd never be more than a month out of date. We are also able to put a notice on the Case Management/Electronic Case Files system if we are experiencing problems

at the court building. We can even say how long we'll be away and include emergency phone numbers for attorneys and for employees."

"Basically, we're a computer-driven operation," Restani agrees. "Attorneys can always contact the court by phone. Temporary restraining orders are handled by phone anyway and we're quite used to not seeing attorneys. Electronics and our website work well for us."

However, Restani admits to some concerns about the COOP site, which were resolved by the exercise. "It was an interesting experience to go there," she said. "I could operate from my home over the Judiciary's communications network, but in a real emergency I would be at the New Jersey COOP site. I wanted to see how people got to the site, particularly using public transportation and without going through lower Manhattan."

Restani says it is important to select a COOP site far enough away, yet close enough. "You have to consider the logistics of how your people get to a site," she says, "and the avenues of transportation."

The court's COOP called for human resource and financial procurement personnel to go to the New Jersey facility immediately, along with the clerk of court and IT people. "We learned," said Volpe, "that it makes more sense for just the computer staff to go initially, along with the clerk and deputy clerk, and secure connectivity with our server. If there was an incident, we don't want to take more people than absolutely necessary away from their families." The court's COOP will be adjusted.

The court also had the finance and procurement manager telework to test if she could connect

from home with other government agencies—which was successful. The court's succession plan also was tested by having two managers not respond. In both instances, the managers' deputies took their places without incident.

"Knock on wood, it was seamless," said Volpe, describing the court's ability to operate from the remote site. "We found a lot of problems. But correcting them involves more tweaking than anything else."

The District Court for the District of New Jersey was a major contributor to the exercise success. "Without their cooperation and generosity," said Kimble, "this exercise would have been far more difficult."

"A well-thought-out—and tested—COOP allows a court to continue essential activities and functions in the event of a disaster, whether natural or man-made," said William Lehman, chief of the Administrative Office Judiciary Emergency Preparedness Office. "They also ensure the safety and well-being of employees, visitors, and the public."

Restani endorses a continual monitoring of a court's COOP program. "What good are walkie-talkies if you don't check the batteries?" she asks. "We send someone to the District Court for the District of New Jersey once a month to check on our server equipment. We have emergency plans. The various scenarios we worked out in Exercise Grand Slam were actually about solving problems from New Jersey. We've never had to set up shop in there, but we now know we can." 

# Help Offered for Pro Se Filers and Bankruptcy Courts

Filing a bankruptcy case pro se—without the assistance of an attorney—is not for the faint of heart. “Before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), a pro se debtor could successfully navigate filing a Chapter 7 bankruptcy,” said Bankruptcy Judge S. Martin Teel, Jr. (D.D.C.). “But with the new Act and its many technical requirements, it’s really a minefield for pro se filers.”

Now the Administrative Office’s Bankruptcy Judges Advisory Group (BJAG), of which Teel is a member, has developed a helpful web page for individuals who are thinking of filing a bankruptcy petition pro se. The website is [www.uscourts.gov/bankruptcy-courts/prose.html](http://www.uscourts.gov/bankruptcy-courts/prose.html).

“We noted the growth in pro se filings around the country, particularly after the BAPCPA was implemented,” said Chief Bankruptcy Judge Judith Wizmur (D. NJ), BJAG’s chair. “The reason for the increase may be that some attorneys who dabbled in bankruptcy filings were driven out of the field, deterred by the complexities and the greater impositions the law placed on attorneys. The growth in pro se filings also has increased pressure on bankruptcy clerks and courts, so we thought we could assist with a web page for pro se filers.”

The website’s message is cautionary. “While individuals can file a bankruptcy case without an attorney or pro se,” the opening text warns, “it is extremely difficult to do it successfully. . . . The rules are very technical, and a misstep may affect a debtor’s rights. For example, a debtor whose case is dismissed for failure to file a required document, . . . may lose

the right to file another case or lose protections in a later case, including the benefit of the automatic stay.”

If an individual is still intent on filing pro se, the page provides information on credit counseling, free legal services, foreclosure resources, and petition preparers. Links direct a user to the local website of the court in which they may file a bankruptcy petition.

The pro se website is the BJAG’s first round effort. “It will evolve and become more sophisticated with links to other organizations,” Wizmur said. The site already links to the ABA and its attorney resources, the Legal Services Corporation, HUD’s approved housing counseling agencies, the Federal Trade Commission’s mort-

access—that may help filers and court staff.

“There is great variation in how individual courts handle pro se filers,” said Wizmur. “Some are successful in reaching out to pro se filers, and some could use some help.”

That’s why the Advisory Group’s next step will be to disseminate information to bankruptcy judges on some of the approaches being taken by courts in pro se bankruptcy filing.


“We recognized that it will be useful for the bankruptcy courts to be apprised of the different approaches in providing assistance to pro se parties,” said Teel, who chairs a subcommittee established by BJAG. For example,

*“We recognized that it will be useful for the bankruptcy courts to be apprised of the different approaches in providing assistance to pro se parties.”*

gage facts for consumers, and Freddie Mac’s guide to avoiding foreclosures.

“We’re also exploring the role of the clerk’s office to see how we can help them,” Wizmur adds. She notes that a very large pro se population prompted the clerk’s office in the Bankruptcy Court for the Eastern District of New York to hire the first pro se law clerk just for bankruptcy. The Advisory Group also will have suggestions for the physical set-up of the clerk’s office—in terms of computer

his subcommittee is canvassing various court websites regarding information made available to pro ses. The subcommittee’s goal is a compilation for bankruptcy judges regarding useful approaches so that a court will not need to reinvent the wheel in implementing steps to assist pro ses.

“We are looking to assist the local courts,” said Wizmur. “We highlight the possibilities and programs. Each bankruptcy court will structure their resources their own way.” 

## Free Access to Court Records Offered at 16 Libraries

A joint pilot project of the Administrative Office and the Government Printing Office (GPO) has made free public access to federal court records available at 16 libraries in 14 states.

The project offers free access to the federal Judiciary's Public Access to Court Electronic Records (PACER) system at 16 participating federal depository libraries. PACER ([www.pacer.uscourts.gov](http://www.pacer.uscourts.gov)) allows users to obtain case file documents, listings of all case parties, judgments, and other information from district, bankruptcy, and appellate courts online, with the data immediately available for printing or downloading.

PACER normally carries an eight-cents-per-page fee, which is used to fund the system's costs. That fee will be waived for all users, even those who already have PACER accounts, when the system is accessed from the 16 libraries.

Each of the participating libraries has agreed to promote the PACER service, provide users with a three-question PACER survey, report PACER activities to the GPO every two months, and provide access only from computers within the library and its branches. The libraries also have agreed to maintain login and password security.

The project, which will last up to two years, is part of the Judiciary's continuing effort to expand public access to court records by discovering if a segment of the public desires access to information contained in the PACER system but is unlikely to go to a courthouse or become a PACER user.

The federal depository libraries participating in the pilot are: Alaska State Court Law Library, AK; Lee College, TX; 7th Circuit Court of Appeals Library, IL; Rutgers Law Library, NJ; San Bernadino County Law Library, CA; State Library of Ohio, OH; University of Michigan School of Law, MI; Fordham Law School, NY; Sacramento County Public Law Library, CA; Wayne State University, MI; University of Tennessee College of Law, TN; Rogers State University, OK; Nova Southeastern University Law Library, FL; Portland Public Library, ME; New Mexico Supreme Court Law Library, NM; and Northern Kentucky University, KY.


## Former Representative Henry J. Hyde Dies



*Former Representative Henry J. Hyde (R-IL) died November 29, 2007. In 2001, a Judicial Conference resolution recognized Hyde's*

*service as he prepared to step down after serving for six years as chair of the House Judiciary Committee. The resolution read in part:*

*"[H]is record of accomplishments [in the House of Representatives] bears witness to an unwavering respect for the Constitution of the United States and an abiding belief in the rule of law. Henry Hyde is sensitive to the position of the Judicial Conference on legislation affecting the Judiciary, and on such matters, has been a source of wise counsel to judges. He recognizes the independence of*

*the Judicial Branch, has vigorously supported improvements in the administration of justice, and has worked to provide appropriate and equitable compensation and benefits to judges and their staffs. The legacy of the Honorable Henry Hyde, as a Member of Congress, as a leader of the Committee on the Judiciary, and as a valued friend to the federal Judiciary will endure for many years to come."* 

## JUDICIAL MILESTONES

**Appointed: Jennifer Walker Elrod**, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Fifth Circuit, October 23.

**Appointed: Leslie H. Southwick**, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Fifth Circuit, October 30.

**Appointed: Sharion Aycock**, as U.S. District Judge, U.S. District Court for the Northern District of Mississippi, October 29.

**Appointed: Robert M. Dow, Jr.**, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, December 6.

**Appointed: Richard A. Jones**, as U.S. District Judge, U.S. District Court for the Western District of Washington, October 30.

**Appointed: Reed Charles O'Connor**, as U.S. District Judge, U.S. District Court for the Northern District of Texas, November 26.

**Appointed: B. Dwight Goains**, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, November 10.

**Appointed: James R. Klindt**, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Florida, October 31.

**Appointed: Lynne A. Sitarski**, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Pennsylvania, October 29.

**Elevated: U.S. Court of Appeals Judge Alex Kozinski**, to Chief Judge, U.S. Court of Appeals for the Ninth Circuit, succeeding U.S. Court of Appeals Judge Mary M. Schroeder, December 1.

**Elevated: U.S. District Judge Sidney A. Fitzwater**, to Chief Judge, U.S. District Court for the Northern District of Texas, succeeding U.S. District Judge A. Joe Fish, November 13.

**Senior Status: U.S. District Judge A. Joe Fish**, U.S. District Court for the Northern District of Texas, November 12.

**Senior Status: U.S. District Judge Allen Sharp**, U.S. District Court for the Northern District of Indiana, November 1.

**Retired: U.S. Magistrate Judge Durwood Edwards**, U.S. District Court for the Western District of Texas, November 9.

**Resigned: U.S. District Judge Paul G. Cassell**, U.S. District Court for the District of Utah, November 5.

**Resigned: U.S. Bankruptcy Judge Steven H. Friedman**, U.S. Bankruptcy Court for the Southern District of Florida, November 2.

**Deceased: U.S. Senior Court of Appeals Judge Wilson Cowen**, U.S. Court of Appeals for the Federal Circuit, October 28.

**Deceased: U.S. Senior Court of Appeals Judge Thomas J. Meskill**, U.S. Court of Appeals for the Second Circuit, October 29.

**Deceased: U.S. Senior Court of Appeals Judge James L. Oakes**, U.S. Court of Appeals for the Second Circuit, October 13.

**Deceased: U.S. Bankruptcy Judge George L. Proctor**, U.S. Bankruptcy Court for the Middle District of Florida, November 18.

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## JUDICIAL BOXSCORE

*As of December 1, 2007*

### Courts of Appeals

Vacancies	14
Nominees	10

### District Courts

Vacancies	32
Nominees	16

### Courts with

"Judicial Emergencies"	17
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For more information on vacancies in the federal Judiciary, visit our website at [www.uscourts.gov](http://www.uscourts.gov) under Newsroom.

# NODS Interface Locates Information Nationwide

Pretrial services and probation officers are finding it easier to locate—and access information on—defendants and offenders within the federal probation and pretrial services system nationwide with a new web-based application called the National Offender Defendant System (NODS). NODS is essentially a point of interconnection. It combines access to Judiciary personnel on PeopleFinder, which helps locate probation and pretrial services officers, as well as all the defendant/offender information on the Probation/Pretrial Services Automated Case Tracking System (PACTS), all the case information on the Public Access to Court Electronic Records (PACER) system, and violations in the Central Violations Bureau's system.

The ground-breaking interface wasn't possible until recently. NODS takes advantage of the recent consolidation of PACTS servers into a primary server and a fail-over counterpart.

"You have to remember that there once were 94 servers, each with a PACTS application. If we had a new application or an upgrade, we had to reach out to each one of those 94 servers," says Nick DiSabatino, Chief of the Probation and Pretrial Services Technology Division, Office of Probation and Pretrial Services. DiSabatino likes to demonstrate on a map how the number of servers nationwide multiplies into legions as local servers and district servers for various other applications are added.

When the applications were maintained exclusively on a local basis, officers could not access data stored in other districts. This posed a problem because defendants and offenders do not limit their activi-

ties to one district—for example it is estimated that 25 percent of persons under supervision will move from one district to another during the period of supervision.

NODS can locate information on defendants and offenders with records in multiple districts, on offenders/defendants who were transferred to another district for supervision, or who may have simply been assigned different probation officers over time.

"Officers need to quickly access information related to earlier pros-

you enter an offender or defendant's name, you can retrieve a photo, personal statistics, the supervision status, dates of investigations, and the name of the supervising officer. The case number will lead you directly into PACER where you can check records, view the sentence imposed and other documents. Hit another key and you jump to PeopleFinder to get contact information for the assigned probation or pretrial services officer."

NODS also allows searches

based on partial case or personal information, and it maintains an audit record so the user can see who else viewed the same case records. Best of all, probation and pretrial services officers can access NODS from anywhere, at anytime, from their laptops or personal digital assistants (PDAs).

However, NODS cannot be used to access confidential court documents, such

as the presentence report and statement of reasons, nor is there access to treatment information, or the assigned officers' notes regarding the case.

NODS was originally designed exclusively for use by Judiciary staff, but according to DiSabatino, another version—with limited features—is in the works for an external audience. The outside version would, for example, link to a limited version of PeopleFinder, and not link to PACER.

The Federal Bureau of Prisons (BOP) and the Criminal Division of the Internal Revenue Service

See *Interface* on page 12



ecutions in other districts for their pretrial and presentence reports," notes Matthew Rowland, Deputy Assistant Director in the AO's Office of Probation and Pretrial Services. "Also, officers supervising defendants and offenders need to determine the whereabouts of codefendants in cases where association is an issue. NODS has proven useful to officers in performing their duties, as evidenced by the application being accessed an average of nearly 200 times a day."

"NODS pulls it all together to make a powerful information system," says DiSabatino. "When

compensation policy. I firmly believe it does not. Along those lines, a distinguished group of our former congressional colleagues considered the linkage issue and endorsed a joint report by scholars at the Brookings Institute and the American Enterprise Institute that was released earlier this year. The report includes a very useful examination of salary linkage as a policy. Their conclusion is that the policy exacerbates a growing impediment to building and retaining an experienced, diverse, and highly-qualified Judiciary, and I found it very persuasive.

**Q:** The House is considering legislation that would open federal trial courts to cameras, a move opposed by the Judicial Conference. The Judiciary feels camera coverage may undermine a citizen's right to a fair trial. What are your views on cameras in the courts?

**A:** I appreciate the concerns expressed by the Judicial Conference in response to the legislation introduced in the House. However, I believe that the bill under consideration respects these concerns. H.R. 2128 does not force a camera into any judge's courtroom. In fact, the bill gives discretion over the electronic recording, broadcasting, or televising of any court proceeding to the presiding judge. There are three limitations on the exercise of this discretionary power. The first and most important being this—if a presiding judge finds that opening the courtroom to cameras would violate the due process rights of any party, then the judge may not

permit cameras or broadcasting of the proceeding, period. The other two limiting factors require that the court 1.) never permit the televising of any juror in a proceeding, and 2.) at the request of any witness, the court must order the face and voice of the witness to be obscured or disguised.

We rely on judges to exercise discretion in protecting the due process rights of parties at every turn of a trial or appellate proceeding. I see no reason that federal judges cannot be relied upon to prudently exercise this new discretion in a way that protects these interests with equal fortitude.

**Q:** Judicial ethics also are under the jurisdiction of your committee. Last fall, a committee chaired by Justice Stephen Breyer addressed numerous judicial conduct issues, and the Judicial Conference continues to implement recommendations from the Breyer Report. Are you satisfied with the steps the Judiciary is taking?

**A:** My concern about an effective mechanism to examine problematic judicial conduct is long-standing. In 2002, my colleague, Representative Howard Coble (R-NC) and I introduced legislation to revise and clarify the process by which complaints against judges are dealt with under the Judicial Conduct and Disability Act of 1980. The Judicial Improvements Act of 2002 became law later that year. Congressman Coble and I later wrote to Chief Justice William Rehnquist in his capacity as head of the Judicial Confer-

ence to make two key suggestions on how to improve the implementation of the law: first, that every federal court include a link on its website to the rules and forms for filing complaints regarding any judge of that court, and second, that chief judges and circuit councils should make their rulings under the 1980 Act more widely available to the public.

The Breyer Committee's report and implementation of its recommendations are a helpful start to address concerns about judicial ethics. Findings by the report, such as inappropriate initial judicial review of "high-visibility" complaints, highlights the importance for the Judicial Conference to provide clarity for judges about the requirements of the Judicial Conduct and Disability Act. That said, I'm pleased that, since the Breyer Committee released its findings last year, the Judicial Conference has taken several steps towards implementing the recommendations made in the report, particularly in looking for ways to better educate and advise judges on how to properly move forward with complaints brought against their colleagues on the bench.

I am also very encouraged by the Judicial Conference's release for public comment of the "Rules Governing Judicial Conduct and Disability Proceedings." Once these Rules go into effect, they will ratify many of the Breyer Committee's recommendations. I believe that these Rules, specifically proposed Rules 11 and 21, for example, will provide important guidance to chief circuit judges and the Committee on Judicial Conduct and Disability and improve the examination



and investigation of legitimate complaints lodged against judges. Time will tell whether these Rules have the impact desired on the treatment of legitimate complaints, but I believe they will have a positive impact and have been a long time coming.

**Q:** You introduced patent reform legislation in the House. Why is this legislation important to you? And what are its prospects for enactment?

**A:** Patents are a cornerstone of the United States economy because they spur innovation. By providing inventors exclusive rights to their inventions, patents provide an economic incentive to innovate. However, it has become clear in recent years that problems in the quality of the patent system have damaged the ability of patents to perform this function. Poor-quality patents and inappropriate litigation rules are forcing companies at the cutting edge of technology to divert their limited resources away from R&D, and into defending their businesses against patents that should never have been issued. The patent reform legislation that was passed by the House will address these problems by increasing the scrutiny each patent application must endure and making it more difficult to challenge a patent based on subjective elements like “willfulness” and “intent.” These reforms came mainly from recommendations provided by entities like the National Academy of Sciences, the Federal Trade Commission, and the United States Patent and Trademark Office. Since these reforms are so critical to our economy, I am confident that we will enact patent reform legislation in the 110th Congress.


*“Patents are a cornerstone of the United States economy because they spur innovation. By providing inventors exclusive rights to their inventions, patents provide an economic incentive to innovate.”*

**Q:** During the debate on S. 214, the Preserving United States Attorney Independence Act of 2007, you urged moving quickly to restore the authority of district courts to appoint interim U.S. attorneys. The bill subsequently was enacted. Do you think the law is satisfactory, or do you think it will need further modification down the road?

**A:** When the House considered S. 214, I made clear that returning the interim appointment process to the status quo ante was the immediate priority, but not Congress’s last word on the matter. Reversing the shift in appointment power back to the district court from the Attorney General was a short-term imperative to curtail what the Committee on the Judiciary saw as virtually immediate abuse of the amendments made to the process in the reauthorization of the USA PATRIOT Act.

In the progress of the Judiciary Committee’s investigation of the U.S. attorney firings, we have looked at a second provision in the PATRIOT Act that removed residency requirements for U.S. attorneys. A closer examina-

tion of the source of the provision and its application revealed that it was likely added into the PATRIOT Act reauthorization to make it possible for particular appointees to serve simultaneously as a U.S. attorney and in another position, or in some cases multiple positions, at main Justice. We should repeal that provision.


Communities should feel confident that their U.S. attorneys were not appointed for purely political purposes. These positions of trust shouldn’t be used to “develop the bench” or to send in someone who has no connection to the community whatsoever just because he needed a job. We should fix the system completely, and we will. 

*Interface* continued from page 9

(IRS) have expressed an interest in NODS. The IRS has asked for access because it requires its agents to confirm when defendants convicted of tax violations—particularly those who owe restitution to the government—have completed their sentences. In return for access to NODS, the IRS may possibly provide federal probation and pretrial services officers with the electronic means to confirm the income claimed, taxes paid, and dependents declared by persons subject to presentence investigation and post-conviction supervision.

The probation and pretrial services system is working with the BOP to provide presentence and sentencing data electronically to expedite inmate processing and programming. In turn, the BOP provides probation and pretrial services officers with access to a system similar to NODS, allowing

officers to determine the institution housing an inmate. BOP also provides data from its computer systems to ensure districts are aware of all inmates released to their jurisdiction. They've agreed to expand the data to include treatment and programming information.

To control the potential for abuse of NODS, access is limited at this point to law enforcement and correctional agencies. The application also uses encrypted connections and account authentication processes, and partially masks the social security numbers and dates of birth of defendants and offenders, unless a specific record is selected. Once a specific record has been selected, an auditing feature captures the user name and contact information of the person making the selection. Similar safeguards will be put into place for external agencies. 

## Gavel Passed in Ninth District



On November 30, 2007, Chief Judge Mary Schroeder passed the gavel to her successor, Judge Alex Kozinski, in ceremonies at the James R. Browning U.S. Courthouse in San Francisco. Schroeder, who was chief judge of the U.S. Courts of Appeals for the Ninth Circuit for seven years, was the first woman to lead the circuit. Kozinski, who has served 22 years on the Ninth Circuit, becomes the circuit's 10<sup>th</sup> chief judge since Congress created the position in 1948.

## THE THIRD BRANCH

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